

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.278

Case No. : C. R. No. 4955 of 2023

Date of Decision : January 25, 2024

Jaswinder Kaur Petitioner
vs.
Pritam Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Amit Dhawan, Advocate
and Mr. Deep Kanwal Singh, Advocate
for the petitioner.

Mr. Pawandeep Singh, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 14.07.2023 (Annexure P-9), passed by learned Additional Civil Judge (Senior Division), Nakodar (hereinafter referred to as – the Trial Court), whereby Execution Petition No.4 of 2021 filed by the petitioner, under Order 21 Rule 32 read with Section 151 CPC, for compliance of judgment and decree dated 06.02.1996 passed by learned Trial Court in **Civil Suit No.600/1993** titled as **Bachan Singh vs. Pritam Singh and others**, has been dismissed.
2. The brief facts, as culled out from they petition, are that Bachan Singh (father of the petitioner) was owner of one property measuring 5.75 marlas situated in village Turna, Tehsil Shahkot, District Jalandhar. He filed

civil suit for grant of permanent injunction, which was decreed vide judgment and decree dated 06.02.1996 (Annexure P-3). Bachan Singh expired on 17.11.2003 and the petitioner, being Class-I legal heir and on the basis of registered Will dated 27.12.1996, has inherited all his properties and has stepped into the shoes of decree-holder Bachan Singh. Judgment-debtor Nand Singh had also died after passing of the judgment and decree dated 06.02.1996 and Chanan Singh stepped into his shoes and is bound by the aforesaid judgment and decree.

3. After passing of the said judgment and decree, judgment-debtor Pritam Singh, along with his son Darshan Singh and his brother's son Chanan Singh, by disobeying the said judgment and decree, has forcibly encroached upon major part of property owned by decree-holder from its western side along with side there house and haveli and further raised threats of further intentional disobedience of said judgment and decree. Judgment-debtor Pritam Singh and his son Darshan Singh, even by intentional disobedience of judgment and decree, have demolished the house-wall falling on western side of property of the petitioner/decreed-holder and has encroached upon the major portion which is part of the decree and has also affixed a big gate of more than 10 feet and a small gate of about 4-5 feet in width in the said wall and has also raised a ramp through property of decree-holder by using force and threats.

4. Learned counsel for the petitioner has argued that the learned Executing Court has failed to take into consideration that during the pendency of execution proceedings, a compromise dated 12.08.2006

(Annexure p-4) was effected between the parties, whereby respondent no.3

was only given the right to install a gate. However, respondents no.1 and 2 were not given any authority to do any act in violation of of judgment and decree dated 06.02.1996. The Court below dismissed the application filed by the petitioner without giving any fair opportunity to lead evidence on record that respondents are interfering into the peaceful possession of the petitioner over the suit land and have also encroached upon the part of the suit land. The petitioner has placed reliance on a judgment of this Court passed in the case titled Satish Kumar vs. Jagdish Chander – Law Finder Doc Id # 1389842.

5. Learned counsel for the respondents has submitted that the petition is barred by limitation. No execution can be filed after 12 years of passing of the decree. The property which is subject matter of the aforesaid judgment and decree and some other property owned by the respondents/ judgment-debtors and their representatives is being used as common rasta for ingress and outgress to the houses of Bachan Singh, Pritam Singh and Nand Singh. The main gate of the houses of the respondents and their representatives open towards the property in question. The petitioner/ decree-holder is neither owner nor in possession of the property comprised in petition. Bachan Singh had filed execution application for execution of decree dated 06.02.1996, in which compromise was effected and said execution petition was dismissed as withdrawn. Bachan Singh had also given up some portion of the property towards the common rasta. Respondents no.2 and 3 also gave an amount of Rs.1,00,000/- to Bachan Singh under the compromise against the previous compromise which was acted upon by the parties to save their properties/houses which respondents

no.2 and 3 have already taken. Bachan Singh withdrew the execution application by making statement before the Lok Adalat that the execution was fully satisfied. So, it has been argued that there is no triable issue. The petitioner cannot be given any opportunity to lead the evidence.

6. I have heard the submissions made by learned counsel for the parties and perused the case file.

7. The predecessor of the petitioner filed a suit for permanent injunction, which was decreed on 06.02.1996, whereby decree for permanent injunction restraining the defendants/respondents from interfering in the possession of the plaintiff/petitioner over the plot in dispute was passed. Bachan Singh – decree-holder filed execution petition, in which compromise was effected on 12.08.1996, which reads as under :-

“The below mentioned respectable persons have got affected a compromise regarding the complaint which was submitted by Chanchal Singh son of Kehar Singh, resident of Village Turna and Darshan Singh son of Pritam Singh etc. In this regard as well a complaint has been given by Darshan Singh, Chanan Singh son of Nand Singh, Baljeet Singh son of Darshan Singh, Harcharan Singh son of – not legible –. The decision taken by the respectable is that no one will keep their cattle in the passage. Chanan Singh shall install a gate of 5 ft. width. The wall of Darshan Singh, which is removed shall be re-erected in straight line. The cases which are filed by both the parties against each other in the court shall be withdrawn by them. Chanan Singh shall install a gate of 5 ft width after raising a pillar of 1 ft. with adjacent to the wall of Darshan Singh. No other door or window shall be installed on this place.

In lieu of this, Darshan Singh son of Prittam Singh, Chanan Singh son of Nand Singh shall pay an amount of Rs. 1 lac in equal share. The said amount shall be paid to Sukhwinder Singh son of Ajit Singh, resident of Village Donewal in advance before withdrawal of the cases. After withdrawal of the cases, the amount shall be handed over to Chanan Singh. It has been settled by the consent of both the parties and without any pressure. The complaint may be filed in the office.”

8. Resultantly, the aforesaid execution application was dismissed as withdrawn on 02.09.2006 before the Lok Adalat. Now, petition under Order 21 Rule 32 read with Section 151 CPC has been filed, for compliance of judgment and decree dated 06.02.1996, by removing encroachment by demolishing the eastern wall of house of judgment-debtors falling towards western side of the said property. The prayer clause of the said petition, which was filed on 16.02.2021, reads as under :-

“10. Hence it is prayed that in the interest of justice an order as required under Order 21 rule 32 may be passed for the just abeyance (sic.) obedience of Judgement and decree dated 6-2-1996 passed in civil suit no.Cs/600/93 as fully detailed in the head note of petition and further compliance of said decree may be got effected (a) By removing encroachment by demolishing the eastern wall of house of J.Ds falling towards western side of the said property and closing gate and door fitted in the said wall and to restore the plot/property of petitioner in terms of decree (b) Prohibitory order of Injunction may be passed to stop the said respondents them self or through any other person claiming through them from further disobeying

the above judgment and decree. (c) Properties of J.Ds and their representatives may be attached till compliance of said decree. (d) Jds/respondents may be put behind bars being wilful disobeyers. (e) Attached properties may be sold for compliance of judgment and decree. (f) Any other relief deemed fit under the circumstances may be granted to the petitioner/D.H to meet with ends of justice.”

9. It is well settled that a decree becomes enforceable the moment judgment is delivered. Under Article 136 of the Limitation Act, the limitation to execute a decree is 12 years, when the decree becomes enforceable. In the present case, the decree was passed on 06.02.1996. It could be enforced with a period of 12 years. Earlier, the execution application under Order 21 Rule 32 CPC was filed, in which compromise was effected and the said execution application was dismissed as withdrawn on 02.09.2006 before the Lok Adalat. Since the petition under Order 21 Rule 32 read with Section 151 CPC has been filed on 16.02.2021 for obeying the decree dated 06.02.1996, so, same is barred by limitation and the decree in question has become unenforceable.

10. Since the execution application under Order 21 Rule 32 CPC is barred by limitation, there is no ground to interfere in the impugned order passed by learned Trial Court and there is no need to grant any opportunity to the petitioner to lead evidence in order to prove the averments made in the petition. The authority cited by the petitioner is of no help to the petitioner.

11. In view of what has been discussed in the preceding paragraphs, I do not find any merit in the present revision petition, which is accordingly dismissed.

12. Pending applications, if any, shall stand disposed of along with this judgment.

January 25, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.